

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LANCE RUCKER,)
Plaintiff,) Civil Action No. 19 – 194
v.)
ATTORNEY GENERAL OF)
PENNSYLVANIA,)
Defendants.) Magistrate Judge Lisa Pupo Lenihan

ORDER

1. The Court's Order dated July 31, 2019 (ECF No. 9), which denied Plaintiff's Motion for Leave to Proceed *in forma pauperis*, is hereby **VACATED** because it improperly evaluated that motion as seeking to proceed *in forma pauperis* in a habeas case. Per Plaintiff's filing of a civil rights complaint on July 17, 2019, Plaintiff indicated that he was not seeking habeas relief. Therefore, the filing fee for this case is \$350.00 and not \$5.00.

2. Plaintiff's Motion for Leave to Proceed *in forma pauperis* (ECF No. 6) is **GRANTED** to the extent that the case may proceed without the prepayment of the entire filing fee.

3. Plaintiff shall pay **\$25.91¹** as an initial partial filing fee as provided by 28 U.S.C. § 1915(b)(1)(A); however, he is still assessed the total **\$350.00** filing fee in this case.

¹ Plaintiff had \$777.16 worth of deposits into his inmate account for the six months preceding the submission of his Complaint. The average monthly deposit was \$129.53, and twenty percent of that is \$25.91. *See* 28 U.S.C. § 1915(b)(1)(A) (explaining the calculation of the initial partial filing fee).

4. The agency having custody of Plaintiff shall forward, within **THIRTY (30) DAYS** from the date of this Order, the initial partial filing fee of **\$25.91** to the Clerk of Court. A check from a penal institution, a cashier's check, or a money order should be made payable to "Clerk, U.S. District Court for the Western District of Pennsylvania" and transmitted to: Clerk of Court, U.S. District Court, Western District of Pennsylvania, 700 Grant Street, Suite 3110, Pittsburgh, PA, 15219. Personal checks will not be accepted. The following information shall either be included on the face of the check from the penal institution, cashier's check, or money order or attached thereto: (i) the full name of the prisoner; (ii) the prisoner's inmate number; and (iii) the case number for this action. Checks or money orders which do not have this information will be returned to the penal institution.

5. After payment of the initial partial filing fee, Plaintiff shall be required to make monthly payments of twenty percent of the preceding month's income (that is, all funds deposited into the account) credited to the account. Each time a deposit is made to the inmate's account, the agency having custody of Plaintiff shall set aside the deposit immediately before any disbursement is made by the inmate and shall forward payments from the Plaintiff's account on a monthly basis to the Clerk of Court each time the amount in the account exceeds \$10.00. These payments shall continue until the filing fee of \$350.00 is paid in full. The prisoner information described in paragraph 3 shall either be included on the face of the check from the penal institution, cashier's check, or money order or attached thereto.

6. Plaintiff is warned that he is ultimately responsible for payment of the filing fee if the agency with custody over him lapses in its duty to make payments on his behalf. For this reason, if Plaintiff is transferred to another jail or correctional institution, Plaintiff should ensure

that the new institution is informed about this lawsuit and the required monthly payments as set out herein. Plaintiff is advised to retain a copy of this Order for this purpose. This Order will be binding on the Superintendent/Warden of any jail or correctional facility where Plaintiff is incarcerated until the filing fee is paid in full in accordance with the provisions of 28 U.S.C. § 1915(b)(1).

7. The Clerk of Court shall mail a copy of this Order to the Inmate Account Officer at Plaintiff's place of confinement.

8. The Clerk of Court shall enclose an authorization form which Plaintiff shall complete and **return within ten (10) days** of this Order. Plaintiff may either authorize monthly payments from his inmate account or move to withdraw this action *without payment of any portion of the filing fee.*

9. The Clerk of Court is directed to reopen this case and file the Complaint and any attached exhibits.

10. If Plaintiff authorizes payments and the initial partial filing fee of **\$25.91** is not received within **THIRTY (30) DAYS** from the date of this Order then this action may be dismissed for failure to prosecute.

DONE AND ORDERED this 1st day of August, 2019.

/s/ Lisa Pupo Lenihan
Lisa Pupo Lenihan
United States Magistrate Judge

Cc: Lance Rucker
DM9093
SCI Forest

Housing Uni F-B-48
P.O. Box 945
Marienville, PA 16239

Inmate Account Officer
SCI Forest